Supreme Court, U.S.
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No. 01-587

IN THE

Supreme Court of the United States

SHAWN LEMAIRE, *et al.*,

Petitioners,

v.

DANOS & CUROLE MARINE CONTRACTORS, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT DANOS & CUROLE MARINE CONTRACTORS, INC.

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Danos & Curole Marine Contractors, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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REASONS FOR DENYING THE WRIT

The supervisory power of the Supreme Court of the United States should not be invoked because no compelling reasons have been asserted in petitioners' writ application to satisfy the rules of the Supreme Court of the United States. The primary question presented by petitioners is whether the interpretation of the phrase "in the same employ" as contained in 33 U.S.C. § 933(i) qualifies as a substantial 'gap' in federal law, under 43 U.S.C. § 1333, mandating the application of Louisiana law. Petitioners argue that the United States Court of Appeals for the Fifth Circuit improperly held that § 933(i) bars a Longshore and Harbor Workers' Compensation Act claimant from bringing a Louisiana tort action against a "borrowed co-employee" and his nominal employer. According to petitioners, such an interpretation extends federal law "without following applicable Louisiana law to the obvious 'gap' in the federal statutory law" and has created a conflict between the Fifth and the Ninth and Eleventh Circuits. Petitioners also claim that the Fifth Circuit holding conflicts with the Louisiana Supreme Court. Pet. at 5, 12, 14.

The Fifth Circuit opinions in *Perron v. Bell Maintenance and Fabricators, Inc.* 970 F.2d 1409 (5th Cir. 1992), *cert. denied*, 507 U.S. 913, 113 S. Ct. 1264 (1993) and its progeny along with its ruling in the case at bar are consistent with the historical and permissible interpretations of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901, *et seq.* The lower courts simply used historical precedent to interpret the exclusivity provision of § 933(i) of the Longshore Act in determining the identities of persons and entities excluded from tort liability because they are "in the same employ" as the claimant. The Fifth

Circuit interpretation of § 933(i) does not violate the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333, because the interpretation of § 933(i) of the Longshore and Harbor Workers' Compensation Act does not constitute a gap in federal law. No conflict exists between prior opinions of the Fifth Circuit and those of the Ninth and Eleventh Circuits of the U.S. Court of Appeals. The opinions of the Louisiana Supreme Court are not in conflict with the Fifth Circuit on this issue.

I.

THE FIFTH CIRCUIT'S RULING IS CONSISTENT WITH PREVAILING FEDERAL LAW

A. No Gap In Federal Law Exists

Rule 10 of the Rules of the Supreme Court of the United States provides that review on a Writ of Certiorari is not a matter of right, but of judicial discretion and provides three, non-exclusive, reasons to invoke the Court's supervisory power. The first reason is that the United States court of appeals has created a conflict with a decision of another United States court of appeals on an important matter or has decided an important federal question that conflicts with a decision by a state court of last resort; or in some other way has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure so as to call for review. The second reason to grant review is where a state court of last resort has decided an important question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals. The third reason occurs when a state court or a United States court of appeals has decided an important question of federal law that

has not been, but should be, settled by this Court, or is in conflict with relevant decisions of this Court. Petitioners have not provided a showing that an important question of federal law is at issue and should be resolved by this Court.

The primary questioned presented by petitioners is whether the Fifth Circuit Court of Appeals violated the Outer Continental Shelf Lands Act (hereinafter referred to as "O.C.S.L.A." or "the Lands Act"), 43 U.S.C. § 1333, by interpreting the phrase "in the same employ", as contained in 33 U.S.C. § 933(i) of the Longshore and Harbor Workers Compensation Act (hereinafter referred to as "the Longshore Act" or "L.H.W.C.A."), 44 Stat. 1424, as amended, 33 U.S.C. §§ 901, *et seq.*, to prevent an injured worker from bringing a claim against another individual and his nominal employer under Louisiana substantive law. Petitioners argue that the Fifth Circuit's opinion impermissibly interprets the phrase "in the same employ" under federal common law because the interpretation must be considered a 'gap' in federal law which must be supplemented with Louisiana law as "surrogate federal law".[1]

The Fifth Circuit's opinions in the case at bar and in *Perron v. Bell Maintenance and Fabricators, Inc.*, 970 F.2d 1409 (5th Cir. 1992), *cert. denied*, 507 U.S. 913, 113 S. Ct. 1264 (1993) are consistent with the historical and permissible interpretations given to federal statutory law under the Lands Act and the L.H.W.C.A. Petitioners argue that O.C.S.L.A., more specifically 43 U.S.C. § 1333(a)(2), provides that Texaco's fixed platform is subject to federal laws and the civil and criminal laws of each adjacent state to the extent that they are applicable and not inconsistent with federal law. To support this petitioners cite *Rodrigue v. Aetna Casualty*

1. Pet. at 6 and 12.

& Surety Co., 395 U.S. 352, 89 S. Ct. 1835 (1969) and *Chevron Oil Co. v. Huson*, 404 U.S. 97, 92 S. Ct. 349 (1971). Petitioners argue that in *Rodrigue*, this Court recognized the existence of substantial gaps in federal law which require the application of an entire body of adjacent state law not inconsistent with applicable federal law.

Petitioners make an erroneous leap arguing for the application of Louisiana law to fill a non-existent 'gap' in federal law, allowing them to pursue a Louisiana tort law claim against a borrowed co-employee, Charles Phillips, and his nominal employer, Danos & Curole Marine Contractors, Inc. In this instance there simply is no gap in federal law. Petitioners specifically acknowledge this on pages 10 and 11 of their Writ Application when they argue that "state law should determine who is 'in the same employ' as contemplated by the Longshore and Harbor Workers' Compensation Act (L.H.W.C.A.) . . ." Nowhere in any of the cited statutes or case law is there any mandate or even a suggestion that federal statutory law should be interpreted by resorting to adjacent state law or jurisprudence, yet this is exactly what petitioners request of this court.

The Lands Act provides that the laws of the adjacent state shall also apply "to the extent that they are applicable and not inconsistent" with applicable federal laws.[2] This court in *Huson* specifically stated that the application of Louisiana law is subject to the **absence** of 'inconsistent' and applicable federal law. The reverse corollary was also pointed out, namely, that to the extent "that a comprehensive body of federal law is applicable under 1333(a)(1), state law 'inconsistent' with that law would be inapplicable under

2. 43 U.S.C. § 1333(a); *Chevron v. Huson*, 404 U.S. 97, 92 S. Ct. at 352.

1333(a)(2)."[3] No precedent exists for interpreting the clear wording of the Longshore Act by using Louisiana statutory or case law. The phrase "in the same employ" of § 933(i) must not be interpreted by looking at any particular state's law. In short, there is no 'gap' in federal law which would require the application of state law principles.

The analyses in *Rodrigue* and *Huson* differ greatly from the arguments of petitioners. Both cases dealt with the application of Louisiana law pursuant to O.C.S.L.A., and did not involve provisions of the L.H.W.C.A. *Rodrigue* dealt with the issue of whether claims based upon the deaths of two workers on an offshore drilling rig, located on the outer continental shelf off the Louisiana coast, fell under the Death on the High Seas Act, 41 Stat. 537, 46 U.S.C. §§ 761, *et seq.* (hereinafter referred to as "the Seas Act") or under Louisiana law through the application of O.C.S.L.A. This Court held that Louisiana law applied through the Lands Act with the distinction being that the accident occurred on an artificial island on the outer continental shelf as opposed to on a vessel as required by the Seas Act. The Seas Act applied to those deaths arising from wrongful acts or omissions "occurring on the high seas" as opposed to artificial islands.[4] This Court carefully considered the wording of the Seas Act along with the legislative history of the Lands Act in interpreting the meaning of both acts. Louisiana law was not considered in this analysis.

In *Huson*, this Court determined that Louisiana's one year limitation on personal injury actions, while applicable to plaintiff's personal injury accident on an artificial island

3. *Chevron Oil Co. v. Huson*, 404 U.S. 97, 92 S. Ct. at 352.

4. 46 U.S.C. § 761.

drilling rig located off the Louisiana coast, did not apply retroactively for three reasons: the application of the Louisiana limitations law, through *Rodrigue*, established a new principle of law effectively overruling a long line of decisions by the Fifth Circuit; retroactive application would not have been consistent with Congressional intent; and such an interpretation would have been inequitable. This Court did not resort to Louisiana's interpretation of the retroactive application of its own limitations laws to determine the outcome in *Huson*, rather, it relied upon historical federal jurisprudence. Petitioners' reliance upon *Rodrigue* and *Huson* is, therefore, mislaid.

The *Rodrigue* case provides a useful example for determining when a substantial 'gap' occurs in federal law under the Lands Act, mandating application of an adjacent state's law. In *Rodrigue*, the Fifth Circuit effectively sought to enlarge the Seas Act by interpreting it to include artificial islands located on the outer continental shelf, thereby creating federal common law. The applicability of the Seas Act itself was at issue. Here, petitioners do not argue that the Longshore Act is not applicable. They argue that the Fifth Circuit should have used Louisiana law to interpret the meaning of the phrase "in the same employ" of § 933(i) of the Longshore Act. In *Rodrigue*, this Court determined that the Seas Act simply did not provide a remedy for an action due to negligent acts or omissions which occurred on an artificial island, therefore a substantial gap existed. Since admittedly § 933(i) of the Longshore Act applies, no gap exists.

B. Historical Analysis And Interpretation

The doctrine of "borrowed servant" prohibits a third-party personal injury claim brought by an injured longshoreman against an entity deemed to be his employer. This concept was first considered by this court in *Standard Oil Company v. Anderson*, 212 U.S. 215, 29 S. Ct. 252, 53 L. Ed. 480 (1909). There, plaintiff, a longshoreman, was struck and injured by a hoisted load unexpectedly lowered into the hold of a ship. The hoist was being operated by a winchman who was found to be in the general employ of the defendant dock owner. This Court took into consideration a number of factors including, for example, which entity had the right to control the borrowed employee's activities in determining that the dock owner was the proper defendant. Subsequently, the Fifth Circuit considered this borrowed servant analysis to determine whether an injured longshoreman was barred from pursuing a tort claim against his borrowing employer under the Longshore Act. *Ruiz v. Shell Oil Company*, 413 F.2d 310 (1969); *see also Evans v. Tiple R Welding & Oilfield Maintenance Corporation*, 472 F.2d 713 (5th Cir. 1973); *Dugas v. Pelican Construction Company, Inc.*, 481 F.2d 773 (5th Cir. 1973). Although the Fifth Circuit determined that *Ruiz* was not a borrowed servant, it later affirmed district court cases where the plaintiff was held to be barred from pursuing personal injury claims based upon this reasoning. *Lorton v. Diamond M Drilling Company*, 540 F.2d 212 (5th Cir. 1976); *See also Gaudet v. Exxon Corp.*, 562 F.2d 351 (5th Cir. 1977); *Hebron v. Union Oil Company of California*, 634 F.2d 245 (5th Cir. 1981).

The development of the application of the borrowed servant defense was not altered by the applicability of the

Lands Act. While the facts indicate clearly that O.C.S.L.A. would have applied in both *Gaudet* and *Hebron*, no discussion of the application of the Lands Act was included. This interpretation of the exclusivity provisions of the Longshore Act necessarily relied upon historical federal jurisprudence. State law was not considered to determine who qualified as a borrowed servant under the Longshore Act. This historical evoiution is inopposite to petitioners' arguments. Under petitioners' reasoning, the Longshore Act concerning the application of the borrowed servant defense would need to be interpreted differently depending upon whether the accident occurred on the outer continental shelf, thereby invoking the Lands Act. Petitioners do not advocate the application of adjacent state law in lieu of the borrowed servant doctrine in L.H.W.C.A. claims falling under the Lands Act, however, this would be the logical result if their arguments were accepted. No legislative intent argument would support this purpose. The application of this doctrine in Lands Act cases supports the notion that the *Perron* reasoning is a permissible interpretation of legislative intent. This reasoning is bolstered when considering that the borrowed servant doctrine is not contained within the Longshore Act, yet it has been applied consistently in the Fifth Circuit and in other circuits.[5]

In *Washington Metropolitan Transit Authority v. Johnson*, 467 U.S. 925, 104 S. Ct. 2827, 81 L. Ed. 2d 768 (1984), the Supreme Court held that a contractor who purchased L.H.W.C.A. coverage for the employees of its subcontractors could be considered the "employer" of those

5. *See Peters v. Hess Oil Virgin Islands Corp*, 903 F.2d 935 (3d Cir. 1990); *Hugg v. Marine Tank Testing Corp.*, 631 F.2d 1140 (4th Cir. 1980); *See also* unpublished opinion *Kirkpatrick v. Shell Oil Co.*, 912 F.2d 469 (9th Cir. 1990).

employees for purposes of the exclusivity provision of § 905(a) of the L.H.W.C.A. despite the fact that the contractor had not been statutorily required to procure compensation coverage. Clearly, the contractor was not a borrowing employer and no borrowed servant doctrine issue was raised. Congress quickly reacted to *Washington Metro* in 1984 by amending § 905(a) to make clear that a "contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by § [904]."[6]

In *West v. Kerr-McKee Corp.*, 765 F.2d 526 (5th Cir. 1985), the Fifth Circuit held that the 1984 post-*Washington Metro* amendments did not preclude use of the borrowed employee doctrine to bar third-party tort recovery under the L.H.W.C.A. While not specifically addressed, the facts indicate that O.C.S.L.A. would have applied.[7] Noting that the language of the amendment under § 905(a) could be interpreted in different ways, upholding or abolishing the borrowed-employee doctrine, the Fifth Circuit concluded that the 1984 amendments did not affect the borrowed employee doctrine as it had been used in preventing third-party tort suits against a borrowing employer shielded by the Longshore Act.

In deciding this, the Court reviewed the amendment's legislative and jurisprudential history holding a general contractor's statutory duty under the L.H.W.C.A. as "[secondary] and guaranty-like".[8] The Court specifically

6. 33 U.S.C. § 905(a).

7. *West v. Kerr McGee Corp.*, 765 F.2d at 528.

8. *Id.* at 529.

pointed out that the Congressional Conference Committee report discussing the amendments characterized the *Washington Metro* case as an "unwanted deviation from 56 years of precedent."[9] The precedent was noted to specifically include the borrowed employee doctrine of *Ruiz v. Shell Oil, supra.* This acknowledges the Court's ability to interpret federal statutory law without regard to corresponding state interpretations of similar state statutory language. The Court acknowledged Congressional recognition that the exclusivity provisions of the L.H.W.C.A. could be expansively interpreted to provide the exclusivity defense to a borrowing employer even though not specifically announced in the literal wording of the Longshore Act. Thus, the fiction of a borrowing employer is permissible under federal statutory interpretation even where O.C.S.L.A. applies. Accordingly, the interpretation of the phrase "in the same employ" of § 933(i) by the Fifth Circuit in the case at bar and *Perron* is clearly permissible based upon Congress' intent as determined through legislative history and federal jurisprudence.

II.

NO CONFLICT EXISTS BETWEEN THE UNITED STATES COURTS OF APPEAL FOR THE FIFTH CIRCUIT AND NINTH AND ELEVENTH CIRCUITS

Rule 10(a) of the Rules of the Supreme Court of the United States allows for review based upon this Court's supervisory power provided that the United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on an important matter. The provisions of Rule 10(a) are not satisfied by petitioners' writ application. Petitioners argue that the Fifth Circuit opinions in the case at

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9. *Id* at 530.

bar and in *Perron*, *supra*, conflict with two other decisions of the United States Courts of Appeal for the Ninth and Eleventh Circuits. In both cases, petitioners erroneously argue that the § 933(i) language "persons in the same employ", is restricted to individuals employed by the same employer. In the Ninth Circuit case, *Calder v. Crall*, 726 F.2d 598 (9th Cir. 1984), *cert. denied*, 469 U.S. 857, 105 S. Ct. 185, 83 L. Ed. 118 (1984), plaintiff, an Army and Air Force Exchange Service cashier, sued a non-commissioned officer on active duty with the Air Force and a civilian carpenter employed on an Air Force base for personal injury damages. The L.H.W.C.A. applied to the parties through 5 U.S.C. § 8171, which governs compensation for work injuries involving a non-appropriated fund instrumentality. The question then became whether the phrase "persons in the same employ" of § 933(i) included armed forces employees other than employees of the Army and Air Force Exchange Service. Plaintiff argued that 20 C.F.R. §§ 701, *et seq.* defined the relationship between employee and employer in narrow, nominal terms which is the same as petitioners argue in the case at bar.

In rejecting this argument, the Ninth Circuit noted that the Code of Federal Regulations itself provided that the definitions were only to be used as "guidance as to the meaning and use of specific terms in [subchapter A] 20 C.F.R. § 701.102".[10] The Court found that the regulations did not control the definition of the phrase "persons in the same employ" as found in § 933(i). Quite the contrary, the Court held that the parties were federal employees in the same employ even though plaintiff was employed by a different nominal employer than defendants. Thus, they were "in the same employ" as interpreted by § 933(i). Accordingly, the holding of the Ninth Circuit in *Calder* is consistent with the Fifth Circuit holdings.

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10. *Calder v. Crall*, 726 F.2d at 600.

Likewise the Eleventh Circuit in *Traywick v. Juhola*, 922 F.2d 786 (11th Cir. 1991) barred plaintiff's claims against her employer for personal injury damages under § 933(i) of the L.H.W.C.A. There, plaintiff worked as an employee of an non-appropriated fund instrumentality while her defendant supervisor was a civilian employed by the Army. Again applying the L.H.W.C.A. under 5 U.S.C. § 8171, the Eleventh Circuit focused on the phrase "in the same employ" under § 933(i). Citing the *Calder* case, the Eleventh Circuit found that plaintiff and defendant were federal employees in the same employ even though employed by different nominal employers. It is important to note that the Eleventh Circuit specifically stated that the liability of the United States for tortuous acts of federal employees is limited to "the same manner and to the same extent as a private individual under like circumstances". Thus, the Eleventh Circuit analogized the situation involving federal co-employees to a situation involving private individuals, strongly suggesting that the same result would be reached either way. The holdings in *Calder* and *Traywick* are both entirely consistent with the Fifth Circuit opinions.

III.

OTHER CONSIDERATIONS

Petitioners argue that land-based concepts of negligence should apply and also that the equities involved favor their position. The analogy to land-based negligence concepts do not conflict with the Fifth Circuit opinions and the equities are not significantly supportive. Petitioners cite *Weiland v. Pyramid Ventures Group*, 511 F. Supp. 1034 (M.D. La. 1981), quoting *Gay v. Ocean Transport & Trading, Ltd.*, 546 F.2d 1233 (5th Cir. 1977) for the proposition that negligence under the Longshore Act is to be determined by "analogy to land-based

law concepts."[11] These cases concern vessel negligence actions authorized by § 905(b) of the Longshore Act. Petitioners argue these cases as support for application of adjacent state law, however, § 905(b) of the Longshore Act eliminated the doctrine of unseaworthiness as a basis of liability against the vessel owner under these circumstances. This necessarily required a showing of negligence on the part of the vessel owner as is required in land-based torts.[12] In *Weiland*, the Court acknowledged that the land-based negligence concepts that were to be examined where those of the Restatement (second) of torts, as opposed to Louisiana law, even though the accident occurred on navigable waters adjacent to the Louisiana coast.[13]

Petitioners also argue strenuously that the "quid pro quo" upon which the exclusivity provisions in the L.H.W.C.A. are based is glaringly absent. It should be pointed out that the quid pro quo policy inherent in compensation principles is absent from the vast majority of borrowed employee doctrine cases. Although the traditional quid pro quo may be missing from the *Perron* rationale, both the nominal employer of the injured worker and the nominal employer of the negligent borrowed co-employee enjoy the same protection under this arrangement. The nominal employer of the injured worker would also be protected if one of its employees negligently injured another's borrowed co-employee.

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11. Pet. at 16.

12. *Stockstill v. Gypsum Transpt*, 607 F.2d 1112 (5th Cir. 1979), *rehg. denied*, 610 F.2d 818, *cert. denied*, 101 S. Ct. 2044, 451 U.S. 969, 68 L. Ed. 2d 347.

13. *Weiland* at 1037.

Petitioners also argue the inequities of the Fifth Circuit holdings by example, claiming that an employee of an independent inspection company would be insulated without the quid pro quo reasoning. Just as inequitable would be the situation where the L.H.W.C.A. claimant was injured by an employee, nominally employed by a different entity, but who the injured worker had worked with in the same capacity for a number of years. Allowing a third-party tort suit against a co-employee in this instance would not only be a fiction, but it could also force companies who employ workers on the outer continental shelf to hire these "borrowed co-employees" directly to avoid third-party tort liability. This may well result in increased competitive hardships for businesses operating in an industry known for wide economic fluctuation.

Even more importantly, petitioners ignore the inherent equity of the borrowed employee doctrine in considering third-party tort liability. A person generally the servant of one master can become a "borrowed servant" of another. *Standard Oil, supra.* If the borrowed servant commits a tort while carrying out the bidding of the borrowing employer, vicarious liability for that tort attaches to the borrower and not to the general employer. *Denton v. Yazoo & Mississippi Valley R. Co.*, 284 U.S. 305, 52 S. Ct. 141, 76 L. Ed. 310 (1932); *see also Tyson v. Litwin Corp.*, 827 F.2d 1255 (3d Cir. 1987); *Trevino v. General Dynamics Corp.*, 865 F.2d 1474 (5th Cir. 1989); and *Krueger v. Mammoth Mountain Ski Area, Inc.*, 873 F.2d 222 (9th Cir. 1989).

Under the borrowed employee doctrine the nominal employer of the negligent employee is not held liable because it relinquished the vast majority of the elements that make up the employment relationship such as control over the employee and over his work, beneficial purposes of the

work being performed and the providing of tools and job site. *See Ruiz. supra.* In the vast majority of cases it would be totally inequitable to allow recovery from the nominal employer when the most important elements of the employer-employee relationship do not exist.

Petitioners further argue that the Fifth Circuit's rationale in *Perron* was "never the intent of Congress", yet this was precisely Congress' intent in allowing the continuation of the borrowed servant doctrine in the 1984 amendments to the L.H.W.C.A.[14]

IV.

FIFTH CIRCUIT OPINIONS ARE NOT IN CONFLICT WITH THE LOUISIANA SUPREME COURT

Petitioners argue that the Fifth Circuit opinions here and in *Perron* conflict with an opinion of the Louisiana Supreme Court citing *Johnson v. Alexander*, 419 So. 2d 451 (La. 1982). *Johnson* involved a Louisiana workers' compensation case where a third-party tort suit against an employee of a subcontractor brought by an employee of the contractor was allowed as not being prohibited by state compensation law. *Johnson* did not deal with L.H.W.C.A. provisions nor the reasoning of *Perron.* The Louisiana Supreme Court has not directly addressed the *Perron* case nor its reasoning. Since the L.H.W.C.A. should not be interpreted by examining state jurisprudence interpreting state workers' compensation laws, petitioners' arguments on this issue are non-sequitur. Louisiana courts of appeal that have addressed the *Perron*

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14. *See* Congressional Committee Report reference in *West v. Kerr McGee*, 765 F.2d at 530.

issue have adopted *Perron*.[15] Accordingly, Louisiana law is consistent with the holding of *Perron* and the interpretation of the phrase "in the same employ" of § 933(i) of the Longshore Act.

CONCLUSION

Petitioners' Writ of Certiorari should be denied because the supervisory jurisdiction of this court is not warranted. The Fifth Circuit Court of Appeals has not refused to apply Louisiana law as mandated by the O.C.S.L.A. Louisiana law should be applied only if a substantial gap in federal statutory law exists. Since petitioners' writ application focuses on interpretation of the phrase "in the same employ" of § 933(i) of the Longshore Act, no gap in federal law exists sufficient to warrant the application of Louisiana law. The Fifth Circuit should not use Louisiana law to interpret the wording of the Longshore Act.

The decision of the Fifth Circuit in the case at bar and in *Perron* and its progeny are not in conflict with any other circuits of the United States Courts of Appeal. The supervisory jurisdiction of this Court is not warranted because no conflict among the circuits exists.

The legislative history of the Longshore Act reveals that the Fifth Circuit's interpretation of § 933(i) is perfectly permissible. Federal jurisprudence interpreting § 904 and § 905 of the Longshore Act and its application to contractors, sub-contractors and borrowing employers shows that a strict,

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15. *Malbreough v. Halliburton Logging Services, Inc.*, 710 So. 2d 1149 (La. App. 1st Cir. 1998); *Foreman v. Danos & Curole Marine Contractors, Inc.*, 722 So. 2d 1 (La. App. 1st Cir. 1998), *writ denied*, 734 So. 2d 637 (La. 1998); *Jones v. Compression Coat Corp.*, 776 So. 2d 505 (La. App. 3d Cir. 2000).

literal reading of the Longshore Act is not required to give life to its provisions. The interpretation complained of does not undermine the foundation and goals of the legislation.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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